

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

JOSEPH GRECO, JULES BRODSKY,
TODD J. CHRISTENSON, WILLIAM
DICKIE, et al.,

Plaintiffs,

VS.

C.A. No. 3:13-CV-1005-M

JERRAL "JERRY" WAYNE JONES,
NATIONAL FOOTBALL LEAGUE,
DALLAS COWBOYS FOOTBALL CLUB,
LTD., JWJ CORPORATION, COWBOYS
STADIUM, L.P., COWBOYS STADIUM
GP, LLC, and BLUE & SILVER, INC.,

Defendants.

**APPENDIX IN SUPPORT OF DEFENDANT NATIONAL FOOTBALL LEAGUE'S
OPPOSITION TO PLAINTIFFS' MOTION TO STAY PROCEEDINGS**

Ex.	Description	App. Page(s)
A	Excerpts from Transcript of Scheduling Conference dated Feb. 25, 2014	App. 1 – App. 12
B	Email from Michael Avenatti to Lori Greco et al. dated Dec. 9, 2014	App. 13 – App. 15

May 4, 2015

By: /s/ R. Thaddeus Behrens

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served upon its filing via this Court's CM/ECF system on this 4th day of May, 2015 on the individuals listed below:

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/s/ R. Thaddeus Behrens

R. Thaddeus Behrens

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JOE GRECO, et al.,)
)
)
Plaintiffs,)
)
)
)
JERRAL "JERRY" WAYNE JONES,)
et al.)
)
Defendants.)

TRANSCRIPT OF SCHEDULING CONFERENCE
BEFORE THE HONORABLE BARBARA M. G. LYNN
TUESDAY, FEBRUARY 25, 2014
DALLAS, TEXAS

APPEARANCES:

FOR THE PLAINTIFFS: MR. CHRISTOPHER S. AYRES
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1 But that's not true. I'm not doing that. I'm not doing that.
2 That may be that they're trying to get the benefit of it. But
3 once we talk about bellwether trials, they sound, to some
4 extent, like class actions.

5 We've already passed the rubicon on that. We're
6 going to have bellwether trials, which could indeed
7 potentially have collateral estoppel ramifications and also
8 will give everybody a look-see of how you think your best
9 cases are going to come out and they think their best ones are
10 going to come out.

11 And there are issues on which I am sympathetic to
12 that point, but I don't know what that has to do with this
13 issue.

14 MR. AYRES: Well, I think -- well, my point is,
15 this isn't one proceeding; it's several. And so there's
16 really two main things I would say. The fire marshal, for
17 example, right, Your Honor? So he may -- he may go through
18 one, and you may decide that his testimony, which was sworn in
19 court, is going to be read in subsequent proceedings, okay?

20 There's 234 people that have to be resolved. Maybe
21 they settle; maybe they don't. The same issue is going to be
22 presented each time one of these comes to trial. That's the
23 nature of why you have bellwethers, is to see if you get a
24 sampling.

25 If we do the way that you proposed, which is to do

1 all four separate with two juries, you then have a six-jury
2 sampling on all of these things that the NFL claims to be
3 somewhat related. You would you two verdict on displaced, two
4 on delayed and two on relocated, which gives us a bigger
5 sample size.

6 THE COURT: Well, hold your thought there, because
7 I am not sympathetic to the issue on Simms.

8 You guys didn't want a class action. That case has
9 been pending a long time, and those folks are going to get
10 their trial. So I'm not counting eight Simms defendants on
11 this procedure.

12 MR. AYRES: Okay.

13 THE COURT: Unless you want to roll them into it.
14 You're not going to win on that. I've read your papers. I
15 take your point. I'm rejecting your point.

16 And it's on this, Mr. Ayres, that I'm sympathetic
17 to you on this class action issue. They didn't want it and
18 now they're trying to roll them in there like we have one, and
19 we don't.

20 And the fact that you guys are the lawyers for
21 everybody doesn't mean that the Simms plaintiffs don't get
22 their day in court. They do. And they're not in with the
23 Greco defendants, and they're going to get a trial. So we're
24 going to figure out -- now, it may very well be that you want
25 to propose to me a different way of handling them. But if you

1 don't, those folks are going to go to trial together.

2 MR. AYRES: Okay. We appreciate that, Your Honor,
3 and we think that the case is ready and we agree with the
4 Court's ruling.

5 THE COURT: Okay. But now that I've done that,
6 Mr. Ayres, I hope you're going to be more amenable to what
7 we're talking about here.

8 You are right that conceivably the fire marshal
9 will have to testify 240 times. I can't make your plaintiffs
10 waive their right to live testimony in court just because I
11 wish they would and because you represent them all. They're
12 not a class action. And so in my view, I can't force that
13 down their throats. It's foolish, it's expensive, and I think
14 lawyers, who I suspect are on a contingency fee, are going to
15 be reasonable about not doing that.

16 And so you may agree that the fire marshal doesn't
17 have to testify, but I can't give you live recorded testimony,
18 because I can't record it in here. So I can't answer the
19 question about whether we're actually going to have a bunch of
20 those trials or we're not, unless you guys agree to be bound
21 on behalf of all of your clients -- you both have to agree
22 that you would be bound by outcome.

23 Now, they may be stuck. The defense may be stuck
24 as a matter of collateral estoppel with outcome being
25 dispositive, depending on what the outcome is. You won't,

1 From our perspective, I think if we can know when
2 the bellwether is going to occur, how it's going to occur
3 and...

4 THE COURT: I --

5 MR. AYRES: -- I think I can work with Mr. Behrens.

6 THE COURT: Well, I guess that I want to know --
7 the first step is, are you going to add anybody in to the
8 Simms case for purposes of expanding the bellwether nature of
9 that. And the answer to that is yes or no.

10 If you say no, it's no. You didn't want a class
11 action, those people aren't in Simms, and you can't make them
12 go in Simms. And Mr. Dodge can say no and Mr. Ayres can say
13 no.

14 So if they say no, then there is a more pressing
15 responsibility that I feel to get you bellwethers in Greco
16 sooner rather than later. But that's going to put a lot of
17 burden on everyone.

18 It may very well be that all -- everyone is best
19 served by -- because I'm giving you a pretty firm trial date
20 in Simms and that you give Simms some contours that make it a
21 more meaningful outcome for everyone, that may put less
22 pressure on the bellwethers in Greco. And I kind of -- I need
23 to know that to see if I'm going to have to find a slot for it
24 in the fall or winter, or whether I want to wait on the
25 outcome of Simms and say to you I'm going to give you a

1 time that works for everyone. I'm good all afternoon.

2 MR. AYRES: We can do it at anytime before 4:30.

3 THE COURT: Okay.

4 MR. AYRES: I'll handle it if need be.

5 THE COURT: Let's say two o'clock.

6 MR. IBRAHIM: Okay. And, Your Honor, if I may jump
7 in, and -- we may be able to discuss this on the next call --
8 we also had a request that we be allowed to take discovery in
9 the Greco case from the defendants and third parties. I don't
10 know if Your Honor had a chance to think about that.

11 THE COURT: Well, I'm not going to let you start
12 discovery before I let them make a decision who the discovery
13 plaintiffs are. So all of that is going to tee off at the
14 same time.

15 MR. IBRAHIM: I think our request was, we took
16 discovery from the NFL and some third parties in the Simms
17 case. And I think if -- the defendants are opposing our
18 request to be able to take certain discovery in this case, in
19 the Greco case, and our view is that, you know, under the
20 federal rules, this is a completely separate case,
21 representing different plaintiffs, we should be able to take
22 whatever discovery we believe is necessary in this case,
23 subject to the rules.

24 You know, for example, under Rule 30, we've done
25 ten depositions. You know, I believe we have somewhat of a

1 headstart and thousands of documents were already produced in
2 the Simms case and that -- it sounds like the plaintiffs are
3 not opposed to those being produced and usable in the Greco
4 case, but I -- I think, number one, in the Simms case, it was
5 a class action, and a lot of our discovery was geared towards
6 class issues. That's number one.

7 Number two, I think our strategy for discovery in
8 the Simms case was for the Simms case and not for the Greco.
9 And I don't think we anticipated at that time that any
10 discovery we were taking in that class would preclude us
11 from -- or would be the discovery --

12 THE COURT: All right. Let me interrupt you for a
13 minute. I don't understand the basis, if it is the position
14 of the NFL, to say -- I'm going to use Roger Goodell just as
15 an example, because I think if Roger Goodell is noticed,
16 there's going to be a motion for protective order, but I'm
17 going to use him, because I know his name.

18 The fact that Roger Goodell has been deposed in the
19 Simms case, when the defendants opposed certification of a
20 class, the mere fact that he's already been deposed once by
21 the same lawyers who represent different parties is not likely
22 to be granted by me.

23 MR. BEHRENS: Your Honor, back to efficiency, as we
24 come down to a protective order that I would submit. The
25 plaintiffs got exhaustive discovery in the Simms case.

1 THE COURT: The Simms plaintiffs got exhaustive
2 discovery.

3 You cannot have this both ways, Mr. Behrens. You
4 can't act like this is a class action and so the lawyers who
5 represented the class plaintiffs are stuck with the discovery
6 they did when you opposed it being a class action.

7 These plaintiffs in the Greco case were not in the
8 Simms case and they're not bound by the Simms discovery and
9 they get to do it again.

10 MR. BEHRENS: Your Honor, we tried very hard to
11 limit the discovery to the eight plaintiffs and to limit it to
12 class issues. And that was opposed and overruled.

13 Their discovery went to the entire stadium. They
14 got four years worth of documents. They got to depose
15 everybody they wanted to depose.

16 THE COURT: They're different people. They're
17 different people. They have the same lawyers and they're
18 different people. They're not bound by it.

19 If you hit it out of the park in the Simms case,
20 you win everything, you will still be facing 240 trials. And
21 that was your call. You opposed the class and you can't have
22 the benefit of having one.

23 MR. BEHRENS: I'm not asking for the benefit of
24 having one. I'm saying that in this case, this particular
25 discovery has been done by these lawyers already.

1 THE COURT: So what.

2 MR. BEHRENS: And if they want to take it again, we
3 would end up producing the same thing again.

4 THE COURT: Okay. That's the way it's going to be.

5 MR. BEHRENS: Now, we have a situation where the
6 plaintiffs in three years of litigation have taken exhaustive
7 discovery over everything related to the entire putative class
8 claims. And we know next to nothing about the 234 plaintiffs
9 who did not accept the reimbursement offers that we made three
10 years ago and who we cannot at this moment find out what their
11 expenses were or even what they're --

12 THE COURT: Okay. We're moving backwards. I've
13 already authorized you getting that. You're going to get it.
14 It is -- I expect that I'm going to get motions for protective
15 order. And to the extent those motions for protective order
16 go to, the documents that you were requesting are in the
17 possession of plaintiffs' counsel and they should be
18 produced -- plaintiffs' counsel in Simms and they should be
19 made available to the plaintiffs in Greco, so you're serving
20 exactly the same document requests again, you are very likely
21 to be shut down by me if that happens, Mr. Ibrahim. But if
22 they notice again your same client reps who were deposed, I'm
23 going to take that on a case-by-case basis, but I'm likely to
24 let them do it again, because these plaintiffs are not bound
25 by the discovery that was done in the Simms case.

1 MR. BEHRENS: Okay. With respect to --

2 MR. IBRAHIM: Your Honor --

3 THE COURT: Mr. Ibrahim, stop talking for a moment,
4 please. I'm going to hear from Mr. Behrens, and then I'll
5 hear from you.

6 MR. BEHRENS: With respect to what we've now said
7 in the Greco cases, our hands are tied and limited to the
8 discovery we're allowed to take to these abbreviated
9 interrogatories which we proposed in the fact sheet and three
10 categories of documents, and we are never going to get
11 discovery of the 234 until -- we will be limited to the
12 discovery plaintiffs in taking their depositions.

13 If we are going to start over like the last three
14 years didn't happen, we should be deposing 234 people and --

15 THE COURT: Okay.

16 MR. BEHRENS: -- we should not be limited, and we
17 should have these people come up -- and especially given the
18 history of this case, in that the ten Simms plaintiffs who
19 started, two decided not to answer discovery and chose to
20 voluntarily dismiss their claims. Many do not have expenses
21 that exceeded the offers we made three years ago. If history
22 is a guide, that is going to repeat itself, and we should be
23 permitted to do discovery.

24 What we tried to do is a reasonable approach that's
25 accommodating to the plaintiffs, who happen to be our fans and

1 customers, and to limit the discovery in that way.

2 THE COURT: Okay.

3 MR. IBRAHIM: Your Honor, may I respond?

4 THE COURT: Just a second, please.

5 Mr. Behrens, I recognize that when I was a trial
6 lawyer, probably about 75 percent of what I said in court when
7 I felt like I was losing was to make myself feel better. So I
8 hope you feel better. But nothing you said changed my views
9 about anything I said.

10 You are in part in this position -- I'm not being
11 critical of the strategy call at all, because you ended up
12 prevailing. But part of the consequence of this not being a
13 class action is that you are faced with double discovery, and
14 these are different people who are not bound by the discovery
15 that has happened. That's the way I felt about it when I
16 started this conversation. That's the way I feel about it
17 now. That's the way it's going to be.

18 Now, if you feel that you are being oppressed and
19 mistreated by particular discovery, particularly paper
20 discovery, I will be very amenable to putting the kibosh on
21 it, because there is absolutely no reason why documents
22 produced in the Simms case cannot be made available to the
23 plaintiffs in the Greco case.

24 In terms of depositions that were taken in the
25 Simms case, they are admissible for purposes of impeachment in

1 CERTIFICATE OF OFFICIAL REPORTER

2

3 I, D. Keith Johnson, RDR, CRR, Federal Official

4 Realtime Court Reporter, in and for the United States District

5 Court for the Northern District of Texas, do hereby certify

6 that pursuant to Sections 753, Title 28, United States Code,

7 that the foregoing is a true and correct transcript of the

8 stenographically reported proceedings held in the

9 above-entitled matter and that the transcript format is in

10 conformance with the regulations of the Judicial Conference of

11 the United States.

12 Dated this 3rd day of March, 2014.

13

14 /s/ D. KEITH JOHNSON
D. KEITH JOHNSON, RDR, CRR
TEXAS CSR NO. 3781
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EXHIBIT B

From: Michael J. Avenatti <mavenatti@eaganavenatti.com>
Sent: Tuesday, December 09, 2014 2:13 PM
To: 'Lori_Greco@txnd.uscourts.gov'
Cc: Christopher Ayres; Behrens, R. Thaddeus; Ahmed Ibrahim
Subject: RE: Scheduling in Greco

Thank you Lori. We are available at either time. Plaintiffs position regarding the trial dates is as follows:

The first seat availability trial in Grecco should proceed in April with the second trial immediately thereafter. Once the trial dates are set, the parties and the court can then fashion a scheduling order that makes sense for pre-trial motions, etc., especially seeing as the Simms trial is set in March and may have far reaching collateral estoppel effect on the NFL and the remaining claims. In no event should the first Grecco trial be set well into the Summer or beyond in light of the age of the case, etc.

Thank you again.

Michael

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From: Lori_Greco@txnd.uscourts.gov [mailto:Lori_Greco@txnd.uscourts.gov]
Sent: Tuesday, December 09, 2014 11:55 AM
To: Michael J. Avenatti
Cc: Christopher Ayres; Behrens, R. Thaddeus
Subject: Re: Scheduling in Greco

Ok I can get a phone call set up for tomorrow @ 10:15am. Judge Lynn is still in trial so it would need to be at that time if you can do that OR 3:15. She asked that the parties write to me with their respective positions on the proposed trial date for Greco.

Mr. Behrens, could you get a dial in # for us again?

thanks,

LAG

Lori Anne Greco
Court Coordinator to
U.S. District Judge Barbara M. G. Lynn
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From: "Michael J. Avenatti" <mavenatti@eaqanavenatti.com>
To: "Lori_Greco@txnd.uscourts.gov" <Lori_Greco@txnd.uscourts.gov>
Cc: Christopher Ayres <csayres@ayreslawoffice.com>, "Behrens, R. Thaddeus" <Thad.Behrens@haynesboone.com>
Date: 12/09/2014 11:32 AM
Subject: Re: Scheduling in Greco

I am sorry Lori, I understood that Judge Lynn subsequently spoke with Judge Overstreet and they confirmed that March 2 was okay for the Simms trial. I learned this from Judge Overstreet's clerk late last week and thought you were aware as well.

Best,

Michael

Michael J. Avenatti, Esq.

On Dec 9, 2014, at 9:26 AM, "Lori_Greco@txnd.uscourts.gov" <Lori_Greco@txnd.uscourts.gov> wrote:

Did I miss an email from the parties re: confirming conversation with Judge Overstreet that she is ok with Judge Lynn setting Simms matter for March 2?

thanks,

LAG

Lori Anne Greco
Court Coordinator to
U.S. District Judge Barbara M. G. Lynn
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From: "Michael J. Avenatti" <mavenatti@eaganavenatti.com>
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Cc: 'Christopher Ayres' <csayres@ayreslawoffice.com>
Date: 12/08/2014 05:54 PM
Subject: Scheduling in Greco

Lori:

Good afternoon. We have conferred with counsel for the NFL regarding the trial date in the Greco case (not Simms, which is set for early March) and unfortunately have not been able to agree. Is the Court available for a trial setting call this week, preferably this Wednesday?

Thank you in advance.

Best,

Michael

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